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THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

RODNEY M. TOOTHACRE, Plaintiff, v. UNITED STATES OF AMERICA, INTERNAL REVENUE SERVICE Defendant.	Case No. 07-cv-2289-DMS-WMC **NOTICE OF DECISION**

The United States of America ("United States"), by and through its undersigned counsel, hereby submits this Notice of Decision to alert the Court that the United States Tax Court has rendered a decision in Case No. 26357-06, and it respectfully shows the following:

1. On December 6, 2007, Plaintiff filed his Complaint in the above-captioned matter against the United States seeking a temporary restraining order ("TRO") and damages under 26 U.S.C. §§ 7432 and 7433. (Compl. ¶ 1.)

2. By stipulation of the parties, Plaintiff's claim for a TRO was dismissed with prejudice on February

26, 2008. (Docket #9.)

3. Subsequently, the United States filed a Motion to Dismiss for lack of subject matter jurisdiction and for failure to state a claim on which relief can be granted pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, respectively. (Docket #11.) On June 5, 2008, this Court granted the United States' Motion to Dismiss with respect to the § 7433 claim, but it denied it with respect to the § 7432 claim. (Docket #21.)

4. Accordingly, the single remaining claim in this action is Plaintiff's claim for damages pursuant to § 7432 for failure to release a tax lien. Plaintiff seeks $100,000 in damages. (Compl. ¶ 1.)

5. With respect to the § 7432 claim, the Complaint alleges that the Internal Revenue Service ("IRS") was required by 26 U.S.C. § 6325 to release federal tax liens filed against Plaintiff for his outstanding income tax liabilities for the tax years 1993 and 1994 because the collection statute of limitations had expired. Alleging that the IRS knowingly or negligently failed to do so, Plaintiff contends that he is entitled to damages under § 7432. (Compl. ¶¶ 8–11, 13–14.)

6. On June 18, 2008, the United States filed a Motion to Stay Proceedings until a decision was rendered and became final in Plaintiff's case pending in the United States Tax Court, Case No. 26357-06. (Docket #22.) One of the questions presented in the Tax Court proceedings is whether the statute of limitations bars collection on Plaintiff's outstanding income tax liabilities for 1993 and 1994, the exact same liabilities at issue in the present matter. On June 24, 2008, this Court granted the United States' Motion to Stay Proceedings. (Docket #25.)

7. On June 19, 2008, the United States Tax Court rendered its decision in Plaintiff's case. (Ex. A.) Undersigned counsel for the United States received notice of this decision on June 24, 2008.

8. The decision of the United States Tax Court in Plaintiff's case will become final when either Plaintiff exhaust his appeal rights under 26 U.S.C. § 7482 or, if appellate review is not sought, "[u]pon the expiration of the time allowed for filing a notice of appeal, if no such notice has been duly filed within such time." 26 U.S.C. § 7481(a)(1). The United States will promptly notify this Court when the decision of the United States Tax Court becomes final.

9. In accordance with this Court's recent order (Docket #24), the United States will file its Answer

within ten days of the date the decision of the United States Tax Court becomes final.

DATED this 25th day of June, 2008.

Respectfully submitted,

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